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LAWYERS

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E-Filed on 3/13/2008

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,

USA CAPITAL REALTY ADVISORS, LLC.

**USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,**

**USA CAPITAL FIRST TRUST DEED
FUND, LLC,¹**

USA SECURITIES, LLC,²

Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

Chapter 11 Cases

Jointly Administered Under Case No.
BK-S-06-10725 LBR

Judge Linda B. Riegle Presiding

**USACM LIQUIDATING TRUST'S
AMENDED ADVERSARY
COMPLAINT AGAINST LOS
VALLES LAND & GOLF, LLC AND
DAN S. PALMER, JUNIOR**

Adv. No. 08-01058

USACM Liquidating Trust, a Nevada business trust,

Plaintiff,

VS.

Los Valles Land & Golf, LLC, a Delaware Limited Liability Company, and Dan S. Palmer, Jr., a married man residing in California,

Defendants.

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

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For its amended adversary complaint against Los Valles Land & Golf, LLC (“Los Valles”) and Dan S. Palmer, Jr. (“Palmer”), the USACM Liquidating Trust (the “USACM Trust”) alleges as follows:

JURISDICTION AND PARTIES

1. Los Valles is a Delaware limited liability company.
 2. Palmer is a resident and citizen of California.
 3. USA Commercial Mortgage Company (“USACM”) is a Nevada corporation.
 4. On April 13, 2006 (“Petition Date”), USACM, USA Capital Realty
ors, LLC (“USA Realty”), USA Capital Diversified Trust Deed Fund, LLC
DF”), USA Capital First Trust Deed Fund, LLC (“FTDF” and together with DTDF,
unds”), and USA Securities, LLC (“USA Securities”) (collectively the “Debtors”)
voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Management
of USACM were conducted by Thomas J. Allison of Mesirow Financial Interim
agement, LLC (“Mesirow”) who serves as the President and Chief Restructuring
er.

5. On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein (the “Confirmation Order”) confirming Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “Plan”).

6. Under the Plan, the USACM Trust is the successor to USACM with respect to standing to seek allowance and disallowance of Claims and to recover the assets of USACM not otherwise disposed of under the Plan, including the causes of action asserted here.

7. The USACM Trust exists as a Nevada business trust as of the Effective Date of the Plan, which was March 12, 2007.

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1 8. Los Valles filed Proof of Claim No. 10725-01366, on November 13, 2006.
2 USACM filed its First Amended Objection to that claim on September 20, 2007. This
3 amended adversary complaint closely relates to the proof of claim and the Court may
4 exercise jurisdiction over it under 28 U.S.C. § 1334(b). The amended adversary complaint
5 is related to the USACM bankruptcy case and is a core proceeding under 28 U.S.C.
6 § 157(b)(2)(C), (O).

7 9. The statutory predicate for the relief requested herein is 11 U.S.C. § 502 and
8 Bankruptcy Rules 3007 and 7001.

9 10. The USACM Trust asserts claims against Los Valles that were property of
10 the USACM estate, and are now owned by the USACM Trust pursuant to the confirmed
11 Plan of Reorganization and will be used to pay creditors' claims. The USACM Trust
12 consents to this Court's entry of final orders in this adversary proceeding.

13 11. To the extent that this adversary complaint is not "related to" the USACM
14 case, this Court may exercise supplemental jurisdiction over the claims under 28 U.S.C.
15 § 1367 to the extent that the claims are so related to Los Valles' loan and USACM's
16 objection to that claim that they arise out of the same case or controversy as the matters
17 within this Court's § 1334(b) jurisdiction.

18 12. Alternatively, this is a suit between citizens of separate states where the
19 amount in controversy exceeds \$75,000 over which the district court may exercise
20 diversity jurisdiction, and which this Court may exercise under the District's general order
21 of reference.

22 GENERAL ALLEGATIONS

23 13. USACM originated loans for borrowers and solicited the funding of such
24 loans from numerous individuals and entities (collectively, the "Direct Lenders"). Upon
25 information and belief, with few exceptions, USACM originated loans that provided for a
26 mandatory initial funding amount with any additional funding to be made solely at the

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1 discretion of the Direct Lenders. Upon further information and belief, when USACM
2 arranged an increase in the original loan amount, USACM solicited the existing Direct
3 Lenders in the original loan for the additional funds. Absent the affirmative decision by
4 the Direct Lenders to invest additional funds, the original loan would not be increased.

5 14. On March 3, 2004, Los Valles and USACM entered into a Loan Agreement
6 whereby USACM arranged a loan to Los Valles of \$11,700,000. The Loan Agreement
7 provided that USACM was entitled to receive interest in the amount of 18% annually, an
8 Exit Fee of 1.5% of the gross sale price of lots to be paid at the time each lot closed, and
9 Loan Extension fees, among other fees. The Loan Agreement provided Nevada law
10 applied to the interpretation of the Loan Agreement without regard to Nevada choice of
11 law provisions. The Loan Agreement also provided that Los Valles submitted to
12 jurisdiction in Nevada and agreed that any action relating to the Loan Agreement may be
13 brought in Nevada.

14 15. On March 3, 2004, Los Valles and USACM entered into a Fee Agreement
15 providing for a Loan Fee of 5% to be paid to USACM. The Fee Agreement provided that
16 it was governed by Nevada law.

17 16. On March 3, 2004, USACM and Palmer entered into a Limited Guaranty,
18 which provided that Palmer personally guaranteed repayment of all indebtedness (up to a
19 maximum of \$9,000,000) of Los Valles to USACM under and/or arising out of and/or
20 related to the loan to Los Valles. The Limited Guaranty provided that it was governed by
21 Nevada law.

22 17. On October 6, 2006, USACM, Los Valles, and Dan S. Palmer entered into a
23 letter agreement (the "Letter Agreement"). The Letter Agreement provided that it was
24 governed by Nevada law. A true and accurate copy of the Letter Agreement is attached
25 hereto as **Exhibit A**.

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1 18. The Letter Agreement provided for the following sums to be paid by Los
2 Valles to USACM: the sum of \$586,045.83 plus any applicable Per Diem Amounts and
3 other fees no later than December 31, 2007; an amount equal to 1% of the gross proceeds
4 from the sale of residential lots, or an “Earnout Rate” determined under the formula in
5 paragraph 4(C) of the Letter Agreement; additional Per Diem Amounts as defined in the
6 Letter Agreement; and interest on certain fees to which USACM is entitled under the
7 Letter Agreement.

8 19. Palmer personally guaranteed payment to USACM of the amounts due under
9 the Letter Agreement, no later than December 31, 2007.

10 20. The Letter Agreement reflects a compromise between Los Valles, USACM
11 and Palmer as part of a satisfaction of the USACM loan.

12 21. The Letter Agreement reflects compromises by USACM to its detriment in
13 consideration of the promises and commitments by Los Valles therein, including
14 acknowledgment of the sums due and acknowledgment that Nevada law governs.

15 22. The Letter Agreement constitutes an accord and satisfaction of the parties'
16 claims.

17 23. The Letter Agreement and Palmer's guarantee constitute a valid and
18 enforceable contract.

Count One: Breach Of Contract — Los Valles

20 24. The allegations and paragraphs 1 through 23 are incorporated by reference.

21 25. Under the Letter Agreement, Los Valles is obligated to pay USACM the
22 sum of \$586,045.83 plus any applicable Per Diem Amounts and other fees no later than
23 December 31, 2007.

24 26. Under the Letter Agreement, Los Valles is also obligated to pay USACM an
25 amount equal to 1% of the gross proceeds from the sale of residential lots, or an “Earnout
26 Rate” determined under the formula in paragraph 4(C) of the Letter Agreement.

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1 27. Los Valles failed to make the December 31, 2007 payment and counsel for
 2 Los Valles has indicated that Los Valles does not intend to make any other payments due
 3 under the Letter Agreement pending the outcome of Los Valles' claim against USACM.
 4 Los Valles' refusal to perform under the Letter Agreement constitutes a material breach
 5 and a repudiation of the Letter Agreement.

6 28. Because Los Valles has repudiated its obligations under the Letter
 7 Agreement, the USACM Trust may accelerate the payments due.

8 29. USACM Trust has been damaged by Los Valles' breach and repudiation of
 9 the Letter Agreement in an amount to be proven at trial, including the sum of \$586,045.83,
 10 any applicable Per Diem Amounts, Earnout Rate fees or deferred extension fees,
 11 attorneys' fees and costs, and any other fees available under the Letter Agreement.

12 **Count Two: Breach Of Guaranty - Dan S. Palmer, Jr.**

13 30. The allegations and paragraphs 1 through 29 are incorporated by reference.

14 31. In the Letter Agreement, Palmer personally guaranteed payment of Los
 15 Valles' obligations under the Letter Agreement.

16 32. Upon information and belief, Los Valles is financially unable to pay its
 17 obligations due under the Letter Agreement.

18 33. Palmer has refused to honor the guarantee contained in the Letter
 19 Agreement. Accordingly, Palmer has breached the Letter Agreement.

20 34. By repudiating his obligations as guarantor under the Letter Agreement, the
 21 USACM Trust may accelerate its damages against Palmer.

22 35. USACM Trust's damages arising from Palmer's breach of his personal
 23 guaranty include all amounts currently owing to USACM, including the sum of
 24 \$586,045.83, any applicable Per Diem Amounts, accelerated Earnout Rate fees or delayed
 25 extension fees, attorneys' fees and costs, and any other fees available under the Letter
 26 Agreement.

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1 WHEREFORE the USACM Trust requests judgment against Los Valles and
2 Palmer as follows:

3 A. Finding the Letter Agreement constitutes an accord and satisfaction and bars
4 any defenses Los Valles or Palmer may assert and/or that Los Valles and Palmer are
5 estopped from asserting additional defenses related to the fees they promised to pay under
6 the Letter Agreement;

7 B. Awarding the USACM Trust compensatory damages arising out of Los
8 Valles' breach and repudiation of the Letter Agreement in an amount to be determined at
9 trial;

10 C. Awarding the USACM Trust prejudgment interest;

11 D. Awarding the USACM Trust its reasonable attorneys' fees and costs under
12 the Letter Agreement; and

13 E. Awarding the USACM Trust any other relief the Court deems just and
14 proper.

15 RESPECTFULLY SUBMITTED this 13th day of March, 2008.

16 LEWIS AND ROCA LLP

17
18 By /s/ RC (#0006593)

19 Susan M. Freeman (*pro hac vice*)

20 Rob Charles

21 John Hinderaker (*pro hac vice*)

22 Attorneys for USACM Liquidating Trust

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